



STRATEGIC MANAGEMENT SOLUTIONS

611-G Park Meadow Rd. Westerville, OH 43081-2875
Phone 614.882.0596 • Fax 614.882.2556

Received & Inspected

APR 30 2013

FCC Mail Room

April 26, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Request for Review
CC Docket No. 02-6

Contact information:

Jackie Spencer
Strategic Management Solutions
611-G Park Meadow Rd.
Westerville, OH 43081-2875
Telephone Number: 614.882.0596
Fax Number: 614.882.2556
E-mail Address: jas@smserate.com

Appellant/Applicant Name:
Billed Entity Name:
Billed Entity Number:
471 Application Number:
Funding Request Number:

Southern Ohio Educational Service Center
Southern Ohio Educational Service Center
129869
824681
2358892

To Whom It May Concern:

This letter is a Request for Review and an appeal of the Administrator's Decision on Appeal – Funding Year 2012-2013 from USAC Schools & Libraries Division (copy enclosed). The decision states that the applicant did not have a signed contract in place with their service provider before the applicant submitted and certified its 471 application for Funding Year 2012.

Statement of Facts

On Friday, March 16, 2012, the applicant received the attached service contract from the Miami Valley Educational Computer Association (MVECA) for execution. Anthony L. Long, Superintendent of the Southern Ohio ESC (SOESC), signed the

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document in the appropriate areas on March 16, 2012 and returned the executed contract to MVECA. The SOESC also sent a copy of the signed agreement via Anthony Long's Administrative Assistant's (Rhonda Cochran) email to the E-rate consultant for Form 471 processing on 03/16/2012. The contract was executed within program rules well after the pre-requisite 28-day waiting period.

Unfortunately, MVECA had pre-populated three contract dates with the incorrect date of March 19, 2012. Mr. Thor Sage, Executive Director of MVECA, provided the attached letter in explanation of the error.

Conclusion

The applicant is appealing specifically the decision that there was no contract in place when the FCC Form 471 Certification was filed on March 18, 2012. FCC Rules require that a contract be signed and dated by the applicant prior to the filing of the FCC Form 471 Certification for the products and services requested. The basis of the appeal is that the applicant successfully executed MVECA's service agreement on March 16, 2012, but neglected to change the pre-populated date of March 19, 2012 entered by MVECA to the actual date on which the contract was executed by the applicant. This ministerial error occurred on pages 1 and 7 of the contract. Thus, the Form 471 was filed with an erroneous Contract Award Date of 03/19/2012 when, in fact, the agreement was physically signed on 03/16/2012.

Based on the evidence provided, SOESC respectfully requests the SLD reinstate FRN 2358892 as eligible for funding based on the ministerial date errors.

We have enclosed copies of all documents noted in this letter.

We appreciate your time and look forward to your decision on our request for review.

Respectfully,

A handwritten signature in cursive script that reads "Jackie Spencer".

Jackie Spencer
E-Rate Consultant for Southern Ohio Educational Service Center

Southern Ohio ESC (BEN 129869)
Request for Review
Federal Communications Commission
Page 3 of 3

Attachments (5):

Administrator's Decision on Appeal Funding Year 2012-2013 dated 02/25/2013
Letter of Appeal to USAC Schools & Libraries Division dated 02/16/2013
Anthony Long Admin Asst Email dated 03/16/2012
MVECA Contract
MVECA Executive Director Letter



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2012-2013

February 25, 2013

Jackie Spencer
Strategic Management Solutions
611-G Park Meadow Road
Westerville, OH 43081-2875

Re: Applicant Name: SOUTHERN OHIO EDUCATIONAL
SERVICE CENTER
Billed Entity Number: 129869
Form 471 Application Number: 824681
Funding Request Number(s): 2358892
Your Correspondence Dated: February 16, 2013

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2012 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2358892
Decision on Appeal: **Denied**
Explanation:

- According to our records, USAC has determined that at the time Southern Ohio Educational Service Center certified their Form 471 application, the District did not have a signed contract in place with their service provider. During the application review, the District was asked to provide a copy of the signed and dated contract. The record shows that the contract provided in response to the USAC request was signed and dated by the District on March 19, 2012. The record also shows that the District Form 471 Certification was postmarked on March 18, 2012. The rules of this support mechanism state that the applicant must sign and date the contract prior to certifying the Form 471. In this case, you have not demonstrated that you have complied with FCC Rules.

- USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract with your service provider(s), which meets your state and local or the FCC's definition of a contract. Additionally, the services you requested are not non-contracted tariff or month-to-month services. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." *See* 47 C.F.R. sec. 54.504(a). In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

February 16, 2013

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

Contact information:

Jackie Spencer
Strategic Management Solutions
611-G Park Meadow Rd.
Westerville, OH 43081-2875
Telephone Number: 614.882.0596
Fax Number: 614.882.2556
E-mail Address: jas@smserate.com

Appellant:	Southern Ohio Educational Service Center
Applicant name:	Southern Ohio Educational Service Center
Applicant BEN:	129869
SPINs:	143025801
471 Application Number:	824681
Funding Request Numbers:	2358892

Dear Administrator:

This letter is an appeal of the "Funding Commitment Decision Letter for Funding Year 2012" received by the applicant above for Funding Request 2358892.

Statement of Facts

On Friday, March 16, 2012, the applicant received the attached service contract from the Miami Valley Educational Computer Association (MVECA) for execution. Anthony L. Long, Superintendent of the Southern Ohio ESC (SOESC), signed the document in the appropriate areas and returned the executed contract to MVECA. The SOESC sent a copy of the signed agreement via Anthony Long's Administrative Assistant's (Rhonda Cochran) email to the E-rate consultant for Form 471 processing on 03/16/2012. The contract was executed within program rules well after the pre-requisite 28-day waiting period.

Unfortunately, MVECA had pre-populated three contract dates with the incorrect date of March 19, 2012. Mr. Thor Sage, Executive Director of MVECA, provided the attached letter in explanation of the error.

From: "Rhonda Cochran" <so_rcochran@mveca.org>
To: <JAS@smserate.com>
Cc: "Rogina" <so_rconroy@mveca.org>
Sent: Friday, March 16, 2012 2:01 PM
Attach: MVECA Contract.pdf
Subject: MVECA Service Provider Contract
[ackie:

I have attached the signed copy of the internet service contract and I will mail the original.

Have a great weekend!

Rhonda Cochran
Administrative Asst.
Southern Ohio ESC
(937)382-6921 ext. 36
(937)383-3171 fax
www.southernohioesc.org



**SERVICE PROVIDER CONTRACT
INTERNET SERVICE
Contract Number: MVSOHW13**

This agreement for the provision of unbundled Internet access service ("Agreement") is entered into as of this 19th day of March 2012, by and between Miami Valley Educational Computer Association ("Provider") and Southern Ohio Educational Service Center/Hopewell ("Customer"), as verified by the signatures on the signature page below.

RECITALS

WHEREAS, Provider is a regional educational center organized by the State of Ohio to provide communications and other technology services, and;

WHEREAS, the Customer is a School District or School certified for instruction by the State of Ohio, and;

WHEREAS, the Provider through its technology center desires to provide to Customer and Customer desires to secure from Providers the services detailed in this Agreement;

TERMS

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agrees as follows:

I. DEFINITIONS:

As used in this Agreement the following terms shall be defined as follows:

"Customer" shall mean a public or private school or school district that has agreed to the terms and conditions of this Agreement.

"Provider" shall mean the regional educational center.

"Services" shall mean all of the duties and ministrations pursuant to Article III Performance of this Agreement.

"User" shall mean a school or person authorized by a school to make use of the data services or equipment secured by Customer from Provider by this Agreement.

II. TERM AND RENEWAL

This Agreement shall be for the period beginning July 1, 2012 and ending June 30, 2015.

III. PERFORMANCE

Provider shall furnish Customer unbundled Internet access services as further described in attached Exhibit A.

IV. CHARGES AND PAYMENT

Customer agrees to be solely responsible to Provider for all charges billed by Provider for Services provided to customer under this Agreement. Charges for the Services provided under this Agreement will be billed to Customer on a semi-annual basis.

Payment of all invoices for Services provided by Provider under this Agreement shall be due and payable within 30 days of the mailing date on the Customer's receipt invoice/on the date specified in the invoice. Late payments shall be subject to a service charge of one and one half percent (1 1/2%) of any and all unpaid balance per month unless expressly waived by the Provider in writing. Provider may, at its sole discretion, terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for enforcement of payment. If the Provider suspends Services to Customer pursuant to this Section, Provider reserves the right to charge Customer a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to any other amounts owed to Provider by Customer.

V. WARRANTIES AND LIMITATIONS ON LIABILITY AND INDEMNIFICATION

A. Provider shall be liable to Customer for failure to provide Services, but only if such failure(s) is due to the negligence of Provider and not excused by either of the following: 1) Provider shall not be liable for any damages incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or users; 2) Provider shall not be liable for failure to perform if such failure is caused by acts of God, winds, fires, landslide, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, riots, or civil disturbances, failure of a utility or utility type service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.

B. Customer may utilize the Services provided for educational and educational administrative related activities only. Customer acknowledges that its access may be through a shared Internet network to the extent permitted by law. Where the Services provided include access to the Internet networks, Provider does not warrant that the functions of the Internet network will meet any specific Customer or user requirements, or that Services provided will be error-free or uninterrupted; nor shall Provider be liable for any actual damages or any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its users. Further, Customer understands and agrees that Provider will exercise no control over the

information that Customer and users may transmit and access as a result of the provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the Internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Unless special arrangements are made and appended to this Agreement, Provider will not routinely monitor Customer's activities or pupil access to any of the interconnected systems. Any filters or screening devices are limited to those in existence at the date of this Agreement or for which Provider subsequently installs. Provider is not under any duty to install or modify filters or screening programs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems. Some material contained in the interconnected systems may be inappropriate for school aged pupils.

C. To the extent that Customer, either directly or through its agents, permits student access to the interconnected computer system(s) of the Internet through Provider's Services, Customer assumes full responsibility and agrees to hold Provider harmless for any and all access to and usage of information contained on the interconnected computer system(s) of the Internet.

D. CUSTOMER AGREES TO INDEMNIFY AND HOLD PROVIDER, ITS GOVERNING BOARD MEMBERS, OFFICERS, MEMBERS, EMPLOYEES AND/OR AGENTS HARMLESS FROM ANY CLAIMS, SUITS, LIABILITY, LOSS, EXPENSES AND/OR DAMAGES, INCLUDING ALLEGED COPYRIGHT AND OTHER INTELLECTUAL PROPERTY CLAIMS, SUSTAINED BY ANY PERSON BY REASON OF ANY ACT OF CUSTOMER OR ITS USERS IN THEIR ACTIVITIES INVOLVING USE OF PROVIDER'S NETWORK.

E. Provider reserves the right to discontinue Customer's access to the Provider's Service and/or seek other legal or equitable relief for use of the Services that Provider deems to be in violation of the rules and regulations of the State Board of Education or any other state or federal agency; or in violation of this Agreement; or violate state and federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes, but is not limited to: 1) transmitting offensive or harassing statements; 2) developing and/or transmitting offensive or unlawful graphics; 3) transmitting sexual or ethnic slurs explicitly or as part of a joke; 4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or 5) permitting or encouraging unauthorized access to the Provider's network and public networks including unauthorized access to the Internet.

F. Customer understands and agrees that Provider shall have no responsibility for the accessing or transmitting of offensive or unlawful information by Customer or Customer's users, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.

G. Although Provider does not have a duty to monitor Customer or its Users' transmissions, it shall not be prohibited from so monitoring.

VI. PROPERTY

- A. All written procedures and similar items utilized or developed in connection with this Agreement are the property of Provider. Customer hereby waives any rights whatsoever with respect to the property of Provider.

VII. CONFIDENTIALITY OF INFORMATION

- A. Provider shall exercise reasonable ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer.
- B. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.
- C. Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

VIII. NOTICES

- A. All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

- 1. If to Provider:

Name: Miami Valley Educational Computer Association
Address: 330 East Enon Road
City/State/Zip: Yellow Springs Oh, 45387
Phone: 937-767-1468
Facsimile: 937-767-1793

2. If to Customer:

Name: Southern Ohio Educational Service Center / Hopewell
Address: 3321 Airborne Road
City/State/Zip: Wilmington, Ohio 45177
Phone: 937-382-6921
Facsimile: 937-382-3171

B. GENERAL PROVISIONS

- a. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.
- b. **Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, the term of any purchase order, invoice or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.
- c. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.
- d. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
- e. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- f. **Entire Agreement.** This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties

with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.

- g. **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- h. **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.
- i. **Compliance with Law.** Each party agrees to comply with all governmental laws and regulations applicable to the Services contemplated by this Agreement. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.
- j. **Fully Understand and Freely Enter.** The undersigned hereby acknowledge that they have read and understand the foregoing. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

By signing below, Signatory of Customer ("Signatory") certifies authorization to sign on behalf of Customer and certifies having read, understood and agreed to the terms of this Agreement, including the provisions of the attached exhibits which are hereby incorporated herein by reference. Signatory certifies that all information provided by Customer in connection with this Agreement is true and accurate. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; if Customer is another educational entity, Signatory certifies that the Agreement has been approved by formal action of its Board.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

CUSTOMER:

Southern Ohio Educational Service Center
Printed name of Customer

Anthony L. Long
Signature of Officer or Manager for the Customer

3/19/2012
Date

Anthony L. Long
Printed name of Officer or Manager for Customer

Signature of School Board President (Public Schools Only)

3/19/2012
Date

PROVIDER:

Miami Valley Educational Computer Association
Printed name of Provider

Thor F. Sage
Signature of Officer or Manager for the Provider

3/16/12
Date

Thor Sage
Printed name of Officer or Manager for the Provider

EXHIBIT A

INTERNET ACCESS SERVICES

This exhibit is hereby made part of the Internet Access Services Agreement (the "Agreement") entered between Miami Valley Educational Computer Association ("Provider") and Customer, as these terms are defined in the Agreement. The following additional terms and conditions apply to the Agreement.

Charges will be incurred for only those Services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below. Any additional services will be billed monthly as incurred.

1. **Services**

The Services provided and their attendant costs are set forth on Schedule 1 attached hereto and incorporated herein by reference.

2. **Additional Charges**

Customer agrees to pay Provider for any installation costs, if incurred, as a result of providing Services to Customer.

3. **Provider's Obligations**

- a) Provider will provide sufficient training of Customer's personnel to permit Customer to perform all functions and procedures associated with the Internet Access connection.
- b) Provider will plan and coordinate all activities incidental to the implementation of the Internet access connection.
- c) Provider will own and assume all responsibilities for the equipment and facilities which provide physical Internet access system up to and including the router included in any Internet access connection.

4. **Customer's Obligations**

- a) Customer will assume all responsibilities for all local area networks (LAN) connected to an Internet access connection. These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.

- b) Customer will provide surge suppression for all devices either directly or indirectly connected to the Internet access connection. The surge suppression must meet UL1449 rating.
- c) Customer will make its personnel and records available to the extent necessary to facilitate the planning, training and implementation process of the Internet access connection.
- d) Customer will provide Provider with appropriate and sufficient space and electrical power to facilitate the Internet access connection installation.
- e) Customer agrees not to connect any of its local area networks to alternative Internet service providers without Provider approval.
- f) Customer agrees not to resell any Internet access services provided by Provider.

CUSTOMER:

Anthony C. Long
Signature

Anthony C. Long Superintendent
Print Name and Title

PROVIDER:

Thor Sage 3/16/12
Signature of Director

Thor Sage
Print Name

Signature

Print Name and Title

SCHEDULE 1

SUMMARY OF COSTS

This exhibit is hereby made a part of the Agreement by and between Miami Valley Educational Computer Association ("Provider") and Southern Ohio Educational Service Center. Charges will be incurred for only those services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below.

SPIN: 143025801	
INTERNET ACCESS SERVICES DESCRIPTION	
Data Transmission One (1) 40mb connection	
Basic conduit service, including DNS and firewall service.	
Monthly Charge	Annual Charge
\$ 1,104.00	\$13248.00



330 East Enon Road, Yellow Springs, Ohio 45387
Phone: 937-767-1468 Fax: 937-767-1793

February 11, 2013

USAC, Schools and Libraries Division
2000 L Street NW, Suite 200
Washington, DC 20036

Re: Applicant – Southern Ohio Educational Service Center
471 Form Number – 824681
Funding Request Number – 2358892

To Whom It May Concern,

The Miami Valley Educational Computer Association (SPIN Number: 143025801) pre-populated three contract dates on our service contracts that were executed for services to be delivered in Funding Year 2012. Unfortunately, in the case of Southern Ohio ESC (BEN 129869), we pre-populated the contract with an incorrect date of 03/19/2012. The correct date of contract signing by both parties was 03/16/2012 as shown on the contract signature page in Section VIII.B. j. As you can see, my hand-written date is 3/16/2012. The pre-population of an incorrect date on our contract caused a discrepancy which resulted in the contract date being one day beyond the actual date of the 471 filing and certification.

Please note that the contract was executed within the appropriate 471 filing window and that all Erate rules and guidelines were followed with the exception of this clerical error. It is my hope that Southern Ohio ESC's FRN 2358892 will be funded without further delay. Please do not hesitate to contact me directly with any questions.

Sincerely,

Thor Sage
Executive Director
Miami Valley Educational Computer Association